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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 2186-00400 DVF	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>June 27, 2006</u> Signature <u>M. A. Crabtree</u> Typed or printed name <u>M. A. CRABTREE</u>		Application Number 10/621,552	Filed 07-17-2003
		First Named Inventor Bobby Hu	
		Art Unit 3723	Examiner Debra S. Meislin
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/06) <input checked="" type="checkbox"/> attorney or agent of record. 47,231 Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		Signature DEREK V. FORINASH Typed or printed name Telephone number (713) 238-8000 Date June 27, 2006	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: BOBBY HU	§	ART UNIT: 3723
	§	
SERIAL NO.: 10/621,552	§	
	§	
FILED: July 17, 2003	§	EXAMINER:
	§	Debra S. Meislin
FOR: Reversible Ratcheting Tool with a	§	
Smaller Head and Improved	§	
Driving Torque	§	CONFIRMATION NO. 1339

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Atty. Dkt. No.: 2186-00400

Date: June 27, 2006

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants hereby submit this Pre-Appeal Brief Request for Review in connection with the above-identified application. A Notice of Appeal is filed concurrently herewith.

Appellants respectfully submit that the final Office action dated March 29, 2006 contains omissions of one or more essential elements needed for a *prima facie* rejection. In particular, the Examiner has cited a reference that does not clearly show the claimed invention or sufficiently describe the claimed invention so as to have placed the public in possession of that invention.

All of the Examiner's rejections rely on German reference DE 299 07 467 ("*Hsieh*") as teaching a pawl having teeth including a first teeth portion having a first center of curvature and a second teeth portion having a second center of curvature located at a position different from the first center of curvature. The written disclosure of *Hsieh* does not contain any teachings as

Appl. No. 10/219,135
Amdt. Dated June 27, 2006
Reply to Final Office Action Dated March 29, 2006

to the center of curvature of the pawl. The Examiner relies solely on Figures 4 and 5 of *Hsieh* to teach a pawl having two teeth portions with centers of curvature located at different positions. This reliance is based on the Examiner's interpretation that Figures 4 and 5 of *Hsieh* show one teeth portion in "full engagement" with the gear wheel while the other teeth portion is not engaged with the gear wheel.

As previously argued on pages 8-13 of the Applicant's Response dated December 19, 2005, the drawings of *Hsieh* do not clearly show a pawl having two teathed portions with each having a distinct center of curvature located at a different position. The Federal Circuit has repeatedly held that if a drawing is not to scale, geometric relationships and proportions between different elements in such a drawing may or may not be accurate and are subject to varying interpretations. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956 (Fed. Cir. 2000); See also *Nystrom v. Trex Company, Inc.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005). A close examination of the Figures of *Hsieh* clearly shows that the Figures are not drawn to scale. For example, the teeth (21) of the gear wheel of *Hsieh* have a non-uniform and inconsistent size and/or shape as evidenced by slight changes in the width and depth of the teeth as would be expected in a hand-drawn reproduction. See Figures 4 and 5 of *Hsieh*.

In responding to the arguments presented in the Response dated December 19, 2005, the Examiner states that "the drawings were not used to for determining sizes or proportions of the elements." Office Action date June 29, 2006, page 4. Determining that the stop block and the gear wheel of *Hsieh* are in "full engagement" would necessitate a determination of the proportions and geometric relationships between the elements. A "proportion" is defined in Webster's Dictionary as the "harmonious relation of parts to each other or to the whole" and is

Appl. No. 10/219,135
Amdt. Dated June 27, 2006
Reply to Final Office Action Dated March 29, 2006

exactly the determination made by the Examiner. Because the Examiner has relied on Figures not drawn to scale to show geometric relationships and proportions between different elements, the rejection based on *Hsieh* should be withdrawn.

Further, the Examiner's reliance on the Figures to show that one teeth portion of the pawl in "full engagement" with the gear wheel is not supported by the specification. In describing the interface between the pawl and the gear wheel, *Hsieh* states that the stop block (3) is "meshed" with the ratchet wheel. See *Hsieh*, Col., 2, Lines 58-67. "Meshed" simply describes the stop block and the ratchet wheel being in working contact, which may be much less than the fully engaged stated by the Examiner.

The hand-drawn nature of the drawings of *Hsieh* makes it impossible to precisely determine the amount of engagement between the stop block and the ratchet wheel but there is no support in the specification that the teeth are in "full engagement." This is especially evident when considering the figure supplied on page 10 of the Applicant's Response dated December 19, 2005 (that shows a single radius of curvature pawl engaged with a gear wheel) where it is clear that the visible misalignment between the gear wheel and stop block is slight.

Applicant further contends that *Hsieh* does not provide a sufficient description that would enable one skilled in the art to be put in possession of the claimed invention. As discussed above and presented in the Applicant's Response of December 19, 2006, *Hsieh* does not clearly show or describe a first teeth portion having a first center of curvature and a second teeth portion having a second center of curvature located at a position different from the first center of curvature. Since *Hsieh* fails to teach or disclose two teathed portions having centers of curvature located at different positions, *Hsieh* could only serve as an enabling reference for

Appl. No. 10/219,135
Amdt. Dated June 27, 2006
Reply to Final Office Action Dated March 29, 2006

anticipation purposes if one skilled in the art had knowledge of this limitation at the time of invention. However, the Examiner has failed to provide any objective evidence or reasoning that this limitation would be known by one skilled in the art at the time of invention as is required. See page 11 of Applicant's Response of December 19, 2005. Therefore, the rejections based on *Hsieh* should be withdrawn.

For the reasons stated above, appellants respectfully submit that the rejections should be reversed for the reasons given above. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Conley Rose, P.C. Deposit Account No. 03-2769.

Respectfully submitted,



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